

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

CHAPTER 560-12-2

SUBSTANTIVE RULES AND REGULATIONS

**560-12-2-.62 Manufacturing Machinery and Equipment,
Industrial Materials, and Packaging Supplies.**

(1) **Purpose.** This Rule explains the sales and use tax exemptions in O.C.G.A § 48-8-3.2 for machinery and equipment necessary and integral to the manufacture of tangible personal property in a manufacturing plant, for repair and replacement parts associated with such machinery and equipment, and for industrial materials and packaging supplies.

(2) **Definitions.** For purposes of this Rule, the following definitions and explanations apply:

(a) “Consumable supplies” means tangible personal property, other than machinery, equipment, industrial materials, packaging supplies, and energy, that is readily disposable or immediately consumed or expended during the manufacture of tangible personal property. The term includes but is not limited to water treatment

chemicals for use in, on, or in conjunction with machinery or equipment.

(b) “Energy” means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(c) “Equipment” means tangible personal property, other than machinery, industrial materials, energy, and consumable supplies. The term “equipment” includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. Examples of equipment include but are not limited to machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term "equipment" excludes real property.

(d) “Fixtures” means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for

whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include but are not limited to plumbing, lighting fixtures, slabs, and foundations.

(e) “Industrial materials” means materials that are purchased for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term “industrial materials” includes raw materials.

(f) “Local sales and use tax” means any sales or use tax that is levied and imposed in an area consisting of less than the entire state.

(g) “Machinery” means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term “machinery” includes a machine and all of its components, including but not limited to belts, pulleys, shafts, gauges, gaskets, valves, hoses,

pipes, wires, blades, bearings, operational structures attached to the machine including stairways and catwalks, and other devices that are required to regulate or control the machine, allow access to the machine, or to enhance or alter its productivity or functionality. The term “machinery” includes repair or replacement parts. The term excludes real property, energy, and consumable supplies.

(h) “Machinery clothing” means felts, screen plates, wires or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(i) “Manufacture of tangible personal property,” used synonymously with the term “manufacturing,” means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations, engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means, into articles of tangible personal property for sale, for promotional use, or further manufacturing that have a different form, configuration, utility, composition, or character. The term includes but is not limited to the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to

another; temporary storage between two points in a continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(j) “Manufacturer” means a person or business, or a location of a person or business that is engaged in the manufacture of tangible personal property for sale, promotional use, or further manufacturing.

1. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

i. Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33; or North American Industrial Classification Systems industry code 22111 or specific code 511110; or

ii. Generally regarded as a manufacturer.

2. Businesses that are primarily engaged in providing personal or professional services, or in the operation of retail outlets, generally including but not limited to grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(k) “Manufacturing plant” means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(l) “Packaging operation” means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods, or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(m) “Packaging supplies” means materials, whether reusable or single-use, used in a packaging operation solely for packaging tangible personal property. The term includes but is not limited to containers, sacks, boxes, wraps, fillers, cones, cores, pallets, and bags. The term also includes such items as labels, invoices, packing slips, tags, and plates affixed to the product or affixed to or inserted into product packaging.

(n) “Real property” means land, any buildings thereon, and any fixtures attached thereto.

(o) “Repair or replacement part” means a part that is used to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include but are not limited to oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(p) “Substantial purpose” means the purpose for which an item of tangible personal property is used more than one-third of the total amount of time that the item is in use. Alternatively, instead of time, the purpose may be measured in terms of other applicable criteria such as the number of items produced.

(3) Machinery and Equipment Exemption. The sale, use and storage of machinery or equipment that is necessary and integral to the manufacture of tangible personal property are exempt from sales and use tax.

(a) General requirements. In order to qualify for the manufacturing machinery and equipment exemption in O.C.G.A. § 48-8-3.2, the property purchased or leased must:

1. Have the character of machinery or equipment, or of repair or replacement parts to machinery or equipment, at the time of sale or

lease, or consist of components which, when assembled, will have the character of machinery or equipment;

2. Be used at a manufacturing plant; and

3. Be necessary and integral to the manufacture of tangible personal property for sale, for promotional use, or further manufacturing.

(b) Leases. The exemption under O.C.G.A § 48-8-3.2 applies to all lease payments for machinery or equipment made on or after the date that the machinery or equipment qualifies for the exemption, even if the machinery or equipment did not qualify for the exemption at the date of lease inception.

(c) Parts withdrawn from inventory. Miscellaneous spare parts, the ultimate use of which is unknown at the time of purchase, are eligible for the exemption as components or repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property.

(d) Application of Machinery and Equipment Exemption: Necessary and Integral. When determining whether machinery or

equipment is necessary and integral to the manufacture of tangible personal property, the Commissioner shall evaluate the facts and circumstances of each case.

1. Examples of machinery or equipment that generally does not qualify as necessary and integral to the manufacture of tangible personal property at any time include but are not limited to:

i. Motor vehicles that are required to be registered for operation on public highways;

ii. Power lines or transformers that bring electricity into a manufacturing plant;

iii. Real property. Examples include but are not limited to concrete slabs and foundations, and structures or fixtures used for general manufacturing plant ventilation, heating, cooling, illumination, communications, plumbing, or the personal comfort and convenience of the manufacturer's employees;

iv. Storage tanks, containers, racking systems, or other machinery or equipment used to handle, store, or distribute finished goods upon completion of the packaging operation unless exempted by another code section;

v. Administrative machinery or equipment including computers, related computer peripherals, servers, copiers, telephones,

facsimile machines, office furniture, office furnishings, office supplies such as paper and pencils, and educational materials used for non-manufacturing functions, including but not limited to sales, marketing, research and development, accounting and payroll, purchasing, finished goods inventory control, warehousing, and distribution;

vi. Machinery or equipment that is not operated under the control of the manufacturer's employees or other persons under the manufacturer's direction and control. Customer self-service or vending machinery or equipment is not considered to be operated under the manufacturer's direction and control;

vii. Machinery or equipment used in quarrying and mining for site preparation, including the removal and clearing of overburden; and

viii. Living organisms of any kind, including but not limited to people, animals, and bacteria utilized in pollution control processes.

2. Examples of machinery or equipment that generally qualifies as necessary and integral to the manufacture of tangible personal property include but are not limited to:

i. Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging supplies at or among manufacturing plants, or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include but are not limited to forklifts, conveyors, cranes, hoists, and pallet jacks;

ii. Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

iii. Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include but are not limited to boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

iv. Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

v. Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control

center and exempt machinery or equipment, or between separate units of exempt machinery or equipment;

vi. Machinery or equipment used to provide safety for the employees working at a manufacturing plant or to protect the quality of the product, including but not limited to safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;

vii. Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including water treatment systems;

viii. Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing;

ix. Machinery or equipment, including repair, replacement and component parts, used to maintain, clean, repair, restore, install, upgrade or manufacture machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

x. Pollution control, sanitizing, sterilizing, or recycling machinery or equipment. Pollution control machinery or equipment that is necessary and integral to the manufacture of

tangible personal property is not required to be certified by the Environmental Protection Division, Georgia Department of Natural Resources as being adequate and necessary for the purpose of eliminating or reducing air or water pollution.

3. For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property, and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The Commissioner may consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable.

(e) Application of Machinery and Equipment Exemption: Manufacture of Tangible Personal Property. The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants.

Examples of activities that are not considered the manufacture of tangible personal property:

1. Research and development activities;
2. Storage, general handling, and distribution of finished goods inventory; and
3. Any other activity that occurs prior to industrial materials being received at a manufacturing plant or after the completion of the packaging operation at a manufacturing plant.

(4) Industrial Materials Exemption. The sale, use, storage, and consumption of industrial materials are exempt from sales and use tax. In order to qualify for the exemption, the materials must be used for the processing or manufacture of, or conversion into, articles of tangible personal property; and the industrial materials must:

- (a) become a component part of the finished product or
- (b) be coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale.

(5) Exemption for Packaging Supplies. The sale, use, storage, or consumption of packaging supplies are exempt from sales and use tax.

(6) Certificates of Exemption.

(a) Any person making a sale or lease of machinery or equipment (including components and repair or replacement parts) that is necessary and integral to the manufacture of tangible personal property, packaging supplies, or industrial materials must collect sales tax unless such person takes a direct pay permit from the purchaser or lessee or, in good faith, accepts from the purchaser or lessee a properly completed Form ST-5M Certificate of Exemption.

(b) Where a certificate of exemption or direct pay permit has not been previously obtained and submitted and tax is remitted on the purchase or lease of exempt property, the purchaser or lessee may apply to the Commissioner for a refund of such tax.

(7) Agriculture Producers. Every person defined as a dealer in O.C.G.A. § 48-8-2 is required to file a sales and use tax registration for each place of business in this state. A dealer that performs both manufacturing and agricultural operations at a single place of business may avail itself of the exemptions under either O.C.G.A. §

48-8-3.2 or O.C.G.A. § 48-8-3.3, but not both, for that place of business in any one calendar year.

(8) Effective Date. This Rule shall be effective for transactions occurring on or after January 1, 2013.

Authority: O.C.G.A. §§ 48-2-12, 48-8-3.2.